

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5134 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K. KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PREMJIBHAI L. GAMIT

Versus

EXECUTIVE ENGINEER (PANCHAYAT) AND ORS.

Appearance:

Shri P.H. Pathak, for the petitioner.
Shri M.D.Barot, for respondents

CORAM : MR.JUSTICE S.K. KESHOTE

Date of decision: 02/12/97

ORAL JUDGEMENT

The petition is filed for declaring the action of the respondents in giving artificial intermittent break on every 30th day during the entire service period of the petitioner to be illegal, invalid and inoperative. The petitioner further prays that the respondents be directed to pay to the petitioner the wages for the break period. The last and the important prayer is made for the declaration of the action of the respondents of terminating the services of the petitioner as being

violative of Section 25F of the Industrial Disputes Act, 1947. The writ petition has been amended by the petitioner and as per the amended petition, the services of the petitioner were terminated on 19th October 1995.

This Court, on 9.12.1985 passed the order which reads as under:

"Rule. Interim relief refused. However, it will be open to the respondents to give employment to the petitioner any where in the District as and when the work is available for 29 days on the same terms and conditions till this petition is disposed of. Also, it will be open to the respondents to continue the petitioner in service till regularly recruited candidates become available."

So, the interim relief has not been granted by this Court in favour of the petitioner, as prayed for in the Special Civil Application. The interim relief as prayed for by the petitioner in this Special Civil Application is as under:

"8(c) Pending admission, hearing and final disposal of this petition, Your Lordships be pleased to restrain the respondents, their servants and agents from terminating, discharging or otherwise discontinuing the services of the petitioner and restrain the respondents from giving artificial intermittent break, on 30th day of the month."

However, this Court has left it open to the respondents to give the employment to the petitioner anywhere in a District as and when the work is available for 29 days, on the same terms and conditions till the disposal of the petition. It is further being ordered that the respondents may continue the petitioner in service till regularly recruited candidates become available.

The reply to this Special Civil Application is filed by the respondent no.1 and the claim of the petitioner has been contested. The learned Counsel for the petitioner has cited some of the decisions of the Apex Court in support of his contentions that the termination of the services of the petitioner is in violation of Section 25F of the Industrial Disputes Act, 1947 and as such, he is entitled for the reinstatement in

service with backwages. It is contended that the action of the respondents in giving artificial break in the service of the petitioner is wholly arbitrary and unjustified. On the other hand, the learned Counsel for the respondents contended that the petitioner was given purely ad-hoc/temporary appointment as and when there is work available. The last appointment is given to the petitioner for the period which has come to an end on 14th October 1995. As it is the case of giving fixed term appointment to the petitioner, the appointment has come to an end on the expiry of the term of appointment and it cannot be said to be a case of retrenchment as what the petitioner has contended. A chart has been filed along with the affidavit-in-reply showing the period for which the petitioner worked. It is further stated in the reply that two sanctioned post of Clerk in the office of the respondents were there and those posts have been filled in by regular appointment.

I have given my thoughtful consideration to the submissions made by the learned Counsel for the parties. It comes out from the statement Annexure.C annexed to the affidavit-in-reply, that the petitioner has been given fixed term appointment and that appointment has come to an end by efflux of time. Last such appointment was given for a period ending on 14th October 1995 and thereafter, the respondent had not given any appointment to the petitioner. Thereafter such appointments were given to the petitioner as per what this Court has ordered on 9.12.1985.

The question which calls for the consideration of this Court is whether, by merely working on a fixed term appointment, the petitioner has acquired any right to continue on the post. The next question which calls for the consideration of this Court is whether, in case the termination of the services of the petitioner has occurred by efflux of time, the respondents have to comply with the provision of Section 25F of the Industrial Disputes Act, 1947.

It is not the case of the petitioner that, there is no recruitment rules for making appointment on the post of workcharge Clerk in the office of the respondents. It is also not the case of the petitioner that, he has been given appointment by the respondent no.2 in accordance with the recruitment rules or after following the procedure of making open market selection. The petitioner does not dispute the position that he has been given only fixed term appointment from time to time and on all the times, it is not the case of the

petitioner that the appointment is made in accordance with the rules or after making open market selection. In view of the facts aforesaid, the very induction of the petitioner on all the times, on fixed term appointment as workcharge employee, was nothing but a back-door entry or his appointment was contrary to the provisions of Article 14 or 16 of the Constitution of India.

It is a settled law that a temporary government servant does not become permanent unless he acquires that capacity by force of any rule or as declared as a permanent servant. Reference in this respect may have to the decision of the Apex Court, in the case of MADHYA PRADESH HASTA SHILPA VIKAS NIGAM LTD. v. DEVENDRA KUMAR JAIN AND ORS., JT 1995 (1) SC 198. It is held that even if a temporary ad-hoc appointment made in accordance with the recruitment rules or after following the provisions of Articles 14 and 16 of the Constitution of India, the party does not acquire any right to continue on the post. Such appointment can also be brought to an end at any time. The case of the petitioner stands at much lower pedestal than the temporary ad-hoc appointment. When the latter class of person have no right to the post, how far the claim of the petitioner made in the present case can be said to be just and legal? It is a case where, as and when some work was there, the petitioner favoured by the respondents and merely he has been favoured, that appointment given to him will not acquire a character of a permanent appointment or it will not confer any right on the petitioner to continue on the post or to pray for issuance of a writ of mandamus to this Court to the respondents to regularise his appointment and to continue him in service. In the case of BHANUMATI TAPUBHAI MULIYA v. STATE OF GUJARAT, 1995 (2) GLH 228, Mr. Justice B.N.Kirpal, CJ, (as he then was), speaking for the Division Bench held that the appointment which has been given for a fixed term has to come to an end by efflux of time. In such cases, the order of termination is not required to be necessary.

If such appointment of 29 days as prayed for by the petitioner is allowed, it would conclude in a prayer for regular appointment and that too, de hors of the Rules or the provisions of Articles 14 and 16 of the Constitution of India. In case such appointments are to be protected, and that too, to the extent of confirming his status of permanency, it will open floodgates of favouritism, nepotism and corruption and the very Constitutional provisions contained in Articles 14 and 16 of the Constitution of India will become nugatory. At one hand, the Constitution provides for right of the

consideration for employment in the public employment to all eligible citizens who have requisite qualification, but that fundamental right of the citizens will be taken away by adopting the techniques of making appointment of daily wagers or on fixed term or to continue such persons for years together and the Courts will protect those persons and confer the status of permanency. This Court will not perpetuate such illegality.

The grievance of the petitioner that the termination of the services of the petitioner is in violation of Section 25F of the Industrial Disputes Act, 1947 do not stand to any merits. In the case of HIMANSHU KUMAR VIDYARTHI AND ORS. v. STATE OF BIHAR AND ORS., (1997) 4 SCC 391, the Apex Court held that, the concept of "industry" to the extent that all the appointments are regulated by the statutory rules, a Government department has to be excluded. Every department of the Government cannot be treated as industry. In the present case, as stated earlier, the petitioner has been given fixed term appointment in the office of the respondent Panchayat.

The fixed term which has come to an end by afflux of time, the contention of the learned Counsel for the petitioner that, while terminating the services of the petitioner, the provision of Section 25F has to be complied with, cannot be accepted.

In view of the position of law as laid down by the Apex Court, I do not consider it necessary to refer to the cases cited by the learned Counsel for the petitioner.

In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

Sreeram.